

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, these contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. (This is a GIL.)

April 19, 2006

Dear Sir or Madam:

This letter is in response to your letter dated November 21, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC has been retained by our client to determine the taxability of construction materials used in real property construction jobs performed in the State of Illinois. Accordingly, we are requesting a Letter Ruling based on the information set out below.

## **FACTS**

Our client is a manufacturer of structural steel building components. They are not located in Illinois. Its primary customers are general contractors who are building new retail stores throughout the United States. In the past, the majority of its sales have been non-installation sales of their product. However, the trend has changed and now the majority of its projects are installation projects, where they sell and install the structural steel. They are subcontractors of the general contractor.

Our client sells unique products. They are not standard or inter-changeable, and they don't maintain an inventory. Engineers draft and design their product for each project for which they are hired. They buy material on a job-by-job basis.

## **QUESTION**

Our client has purchased all its raw materials exempt from tax. For all installation jobs, based on our understanding of Illinois's sales and use tax laws, we feel that our client needs to pay Illinois state and the applicable local tax only on the **cost of materials** that they use in fulfilling their contract.

## CONCLUSION

We respectfully request your confirmation of our position in this matter. We look forward to hearing from you. Thank you.

## DEPARTMENT'S RESPONSE:

A contract to incorporate tangible personal property into real property is considered a construction contract. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, these contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075.

Therefore, any tangible personal property that a construction contractor purchases that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If such contractors did not pay the Use Tax liability to their suppliers, those contractors must self assess their Use Tax liability and pay it directly to the Department. It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers.

However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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